IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.105 OF 1996

Chloride India Ltd. (Now known as Exide Industries Ltd.), 2-D, MIDC Industrial Estate, Chinchwad, Pune-411019 ..Petitioner

Vs.

1. Shri.P.S.Shinde, Presiding Officer, IInd Labour Court, Swargate, Pune-411002

2. Maharashtra General Kamgar Union, Address: Plot No.252, Janta Colony, R.N.Narkar Marg, Ghatkopar (E), Bombay-400077 ..Respondents

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Mr.P.H.Purav i/b Shri.V.P.Sawant and A.P.Purav for petitioner.
Mr.M.S.Topkar with Shri.N.M.Ganguli for Respondent no.2

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CORAM : B.H.MARLAPALLE,J.
DATE : FEBRUARY 4 & 7,2005

ORAL JUDGMENT:

1. This petition arises from the Award dated 19.9.1995 passed by the IInd Labour Court, at Pune in Reference No.(IDA) 103 of 1989. The brief facts leading to the said reference and which are not disputed, could be summarised as under:

. Mr.S.S.Kakade was employed under the petitioner factory as an operator since 1973 and he was one of the activists/leaders of respondent no.2 Union i.e. the Maharashtra General Kamgar Union. He was issued two different charge-sheets on 5.9.1984 and 16.7.1985 for the alleged acts of misconduct. Domestic enquiry was conducted in respect of both these charge-sheets and the first enquiry proceeded exparte whereas in the second enquiry, the workman had fully participated. The prevailing circumstances under which these charge-sheets were issued, have been elaborately set out in the judgment rendered today in W.P.No. 2434 of 1996 and for the fear of repetition, they are not being set out herein. The Enquiry Officer in both the domestic enquiries by a separate finding holding the workman guilty of all charges in respect of the first charge-sheet and in respect of the second charge sheet, he held that the charges under clause 24(r) and (w) were proved. The Management proceeded to award the punishment of dismissal by order dated 1.8.1988. As the reference for adjudication i.e. Reference No.(IT) 8 of 1985 was pending before the Industrial Tribunal at Pune, application for approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 was submitted before the Tribunal and by an Award dated 2.4.1990 approval was granted. The respondent-Union

therefore, approached the Conciliation Officer challenging the order of dismissal from service and the demand for reinstatement in service with full backwages and continuity, was referred to the Labour Court in Reference No. (IDA) 103 of 1989.

2. In Part-I Award dated 10.11.1994, the Labour Court held that the enquiries conducted into the charges levelled against Shri.Kakade were fair, proper and legal and also in accordance with the principles of natural justice. In the Part-II Award, the Labour Court held that except the charge under clause 24(w) of the Model Standing Orders, no other charges were proved from both the charge-sheets and hence, the punishment of dismissal was not justified. It therefore, proceeded to allow the reference by directing reinstatement of Shri.Kakade in his original post with continuity of service but with 75% backwages with effect from 1.8.1988 till the date of reinstatement. The petitioner-Management is aggrieved by this Award dated 19.9.1995.

3. Mr.Purav, the learned counsel appearing for the Management by referring to the reasonings set out in the impugned Awards, submitted that the said suffer from presumptions and surmises. It was not necessary for the Management to obtain a declaration that the

strike resorted to by the workmen was illegal so as to prove the charges set out in the charge-sheets against Shri.Kakade. The charges of assault on some of the members of the supervisory and managerial staff, have been duly proved and in any case, reappreciation of evidence done by the Labour Court so as to set aside the findings recorded by the Enquiry Officer in his first report, suffers from manifest errors on the face of the record. The acquittal in a criminal case would not have any bearing in adjudicating the Reference against the order of dismissal and reliance in this regard, was placed on a recent decision of the Supreme Court in the case of *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Anr. reported in 2004 III CLR 755*. The testimony of the Management witnesses could not have been discarded only on the ground of want of corroborative evidence i.e. by submission of documents or by examining other witnesses and therefore, the findings recorded by the Labour Court that there was insufficient evidence to prove the charges, are required to be discarded. Even if few charges or one or two charges from both or either of the charge-sheets, are duly proved and if they are of serious nature, the Management's decision to award the punishment of dismissal, would not call for interference, as such a decision, falls

within the managerial domain once the acts of misconduct are proved and the enquiry was held to be fair and proper.

4. Mr.Topkar, the learned counsel for the respondent-Union on the other hand, has fully supported the impugned Award by referring to the depositions of all the witnesses in both the domestic enquiries and it was contended that there was no evidence even to support the findings on the basis of probabilities, leave alone corroborative evidence. So far as the alleged illegal strike was concerned, even as per the case of the management, the majority of the workmen had participated in the alleged strike and they were also covered by the lock-out notice. When Mr.Kakade was proceeded against for the alleged participation in illegal strike and inciting for the same, the participation part of it, would not be of much importance unless it was proved that he was guilty of inciting the strike in the factory premises. He referred to the settlement dated 15.3.1985 and submitted that so far as the production levels were concerned, the same was an improvisation by about 12% i.e. from 70% to 82% and the Management had agreed to pay incentives in different slabs. The highest slab would be 86.5%. It was contended that in production output below 82% could only be an issue

to support the charge of go slow and if the production levels were beyond 82% on any given day after the settlement was signed, the charge of go slow or instigation to go slow, could not have any force. Even otherwise, there was no evidence on record to point out that Mr.Kakade had either instigated any workmen either to resort to a strike i.e. tool down strike or go slow. It was further contended by Mr.Topkar that under supervisory jurisdiction of this Court under Article 227 of the Constitution of India, the Award did not call for interference and the Labour Court has denied 25% backwages as one charge was proved against Mr.Kakade i.e. under clause 24(w) of the Model Standing Orders. The learned counsel urged that though similar charge-sheets were issued to Mr.Chavan and Kakade and witnesses were almost the same, the evidence in each case, will have to be considered independently and one need not be influenced or swayed by the findings recorded in the case of Mr.Chavan.

. It must be mentioned at this stage itself that there could not be two opinions on this issue.

5. As per the first charge-sheet, the following charges were levelled against Mr.Kakade:

1. That from 6.4.84 to 25.4.84 you worked only partially each day for about an hour or two and resorted to illegal sit-in-strike for the rest of the working hours and incited other workmen to resort to illegal sit-in-strike in a similar manner.

2. During the said period, you arranged to put board/posters with threatening language against managerial staff of the Company and instigated other workmen to stage threatening/violent demonstration against management and managerial staff during working hours and within the factory premises.

3. On 15th April, 1984, you organised a meeting within the factory premises during working hours and without permission of the Management ostensibly to celebrate 'Hanuman Jayanti' but with a view to threaten the Management with dire consequences, should your unjustified demands not be considered by the Management.

4. With effect from 27.4.1984, although you were aware that the Management was ready and willing to allow you to attend for work on your giving an undertaking to work normally and to observe normal rules of discipline, you refused to come for work and thereby continued your participation in illegal strike and instigated other workmen to participate in the said illegal strike in similar manner.

5. On 13.8.1984 you along with a few other workmen obstructed the company's contractor Mr.Palande at Recold Corner on Bombay Pune road and at Pimpri Railway Station at 5.30 p.m. and manhandled him and beat him up because he was attending to his contract work with the factory against your wishes.

6. Finally on 6th and 7th August, you with other workmen numbering 60 visited the

places of residence of Mr.P.P.Sharma, Mr.P.K.Chaterjee and Mr.U.V.Shenoy (wake him up) and demanded of them that they should not continue to attend to their duty at the factory, any more and threatened them and their family members with dire consequences,should he neglect the said directive given by you.

7. On 5th September, 1984 at about 6.50 A.M. you along with Mr.S.S.Gogawale and Mr.B.C. Rajguru caught held of our supervisor/management staff, Mr.Navale, Mr.Sarode, Mr.Pendharkar near Deccan Gymkhana (near Natraj Theatre) and at about 7.30 a.m. near H.A.Colony main gate caught hold of Mr.M.P.Sethi, Mr.V.T.Abhyankar, Mr.C.N.Palekar while they were proceeding to factory for duty and severally beat them up for their refusal to stay away from duty as per your wishes".

. Whereas in the second charge-sheet dated 16.7.85, the following charges were framed:

1. On 18.6.85 you along with some other workmen had displayed a notice for the workmen inside factory premises at Canteen Building without permission of the Management alleging therein that some workmen have decided securing signatures of the workmen and appealing to the workmen not to give such signatures.

2. On 14.7.85 at about 20.30 hours while on duty you left normal work and approached some workmen at about 20.45 hours within factory premises and asked and pressurised them to become member of Maharashtra General Kamgar Sanghatana.

3. You have been generally canvassing amongst the workmen not to increase their production to the targeted level in terms of the spirit of the

> Settlement dated 15.3.85 to which you are also a party.
>
> 4. You along with some other workmen have displayed placards of Maharashra General Kamgar Sanghatana inside factory premises without permission of Management."

6. Dealing with the charges levelled in the second charge sheet, it requires to be noted that the Enquiry Officer in his report dated 13.6.1988 held that out of four charges, the first two charges were not proved and the other two charges i.e. generally canvassing amongst workers not to increase the production to the targeted level and displaying placards in the factory premises were proved. The Enquiry Officer recorded his conclusions thus:

> "I therefore, come to the conclusion that the company has not proved misconduct against Mr.Kakade under the Model Standing Orders clauses 24(d), 24(e), 24(i) and 24(p). I further held that Mr.Kakade is guilty of misconduct under Model Standing Orders clauses 24(r) and 24(w)".

. Whereas in the first enquiry report dated 10th January, 1985, the Enquiry Officer held that Mr.Kakade was guilty of instigating other workers to resort to illegal strike, organising and participating in illegal strike, organising illegal meetings within the factory premises, displaying boards/posters in the factory premises without

permission and creating threats to the Management in the factory premises. The Enquiry Officer further held that the charges of misconduct under clauses 24(b)(c)(k)(l)(r) and (d) levelled in the first charge-sheet, were duly proved. Whereas the Labour Court on considering all the evidence that was placed before the Enquiry Officer did not agree with these findings. The depositions of the respective witnesses in both the domestic enquiries are on record. In the first enquiry, the witnesses examined were Mr.S.N.Nandre, Personnel Officer, Mr.V.M.Sarode, Supervisor in Production Department, Mr.M.P.Sethi, Supervisor in Production Department, Mr.P.K.Chaterjee, Manager (Accounts) and Mr.S.A.Palande as well as Mr.P.P.Sharma, Assistant Manager, Accounts and Mr.U.V.Shenoy, Manager (Engineering). The evidence of Mr.S.N.Nandre need not be considered in view of the reasoning set out in the judgment rendered today in W.P.No. 2434 of 1996.

7. The first charge was regarding illegal sit-in-strike after working for about an hour or two between 6.4.84 to 25.4.84 and inciting the workmen to resort to illegal sit-in-strike in a similar manner. The first witness Mr.Sarode in his depositions stated that from 6.4.84 workers suddenly resorted to tool down strike without prior intimation and Mr.Kakade

participated in the same. Mr.Kakade, Mr.Chavan, Mr.Kumbharkar and other workers, leaders had asked the workers to stop work and participated in the tool down strike. The workers were also threatened. Mr.Kakade also threatened supervisory staff including himself. The second witness Mr.Sethi stated that he was working in the factory for about 5 years and he was knowing Mr.Kakade. On 6.4.84 he was on duty and at that time, the factory workers had stopped work all of a sudden and resorted to tool down strike. On that day, there was partial work without normal speed. Mr.Kakade had also participated in the said tool down strike. Such a strike continued till 25.4.84 and on every day, Mr.Kakade, Mr.Chavan and Mr.Kumbharkar were instigating the workers to resort to tool down strike and they were threatening workers as well as the supervisory staff. The third witness examined was Mr.Chaterjee who also repeated that there was tool down strike between 6.4.84 to 25.4.84. He stated that Mr.Kakade and others had held meetings in the factory premises but did not state that Mr.Kakade had instigated the other workers to resort to tool down strike or in a strike. He also did not state that Mr.Kakade along with other three workers had threatened the workers or supervisory staff. If we examine the testimony of Mr.Chaterjee, the testimony of earlier two witnesses i.e. Mr.Sarode

and Mr.Sethi on the first charge, appears to be in verbatim the same. It can safely be believed that there was a tool down strike and the workers were working only for a few hours in each shift and the production was not normal between 6.4.84 to 25.4.84 but such act was instigated by Mr.Kakade as claimed by the Management, does not find support by a reliable probable evidence.

. On the second charge, Mr.Nandre was the sole witness examined and therefore, it has to be concluded that the said charge could not be proved. Regarding the incident of 15.4.1984 Mr.Sarode in his depositions had stated that Mr.Kakade and others had assembled in the factory premises without permission and Mr.Kakade gave a speech. In the said meeting, threatening language was used against managerial staff to the effect that if workers' demands were not met by the Management, there would be adverse consequences. He further stated that such a meeting was without a precedence and that too under the pretext of celebrating 'Hanuman Jayanti'. The second witness Mr.Sethi who is also a shop supervisor like Mr.Sarode, did no state that in the speeches made in the meeting held on 15.4.1984, there was any threatening language used against the Management. However, he added that the workers Shri.Kakade,

Chavan, Rajguru and others stopped the work and went to the other workers asking to stop the work. All workers had assembled together and there was meeting held in which some speeches were also made. This meeting was without permission and under the garb of celebration of 'Hanuman Jayanti'. On the face of this evidence, it is clear that workers' meeting was held on 15.4.1984 purportedly for the celebrations of 'Hanuman Jayanti' and in the same, some workers also made speeches. The meeting was without permission from the Management and apparently during the working hours. Nevertheless, there was no allegation of inciting except in the evidence of Mr.Sethi that the named 4 to 5 workers went to others and asked them to come for a meeting. The other workers who participated in the said meeting, had indulged in act of misconduct under sub-clause (r) of clause 24 of the Model Standing Orders. The emphasis of the Management on this third charge was on holding the meeting ostensibly to celebrate 'Hanuman Jayanti' but infact, with a view to threaten the Management with dire consequences. This has not been proved and even in the deposition of Mr.Sarode, so called threats hurled were not disclosed.

. The fourth charge was in respect of the refusal to sign the Undertaking with effect from 27.4.1984 and

to report for duty. In the evidence of Mr.Sarode and Mr.Sethi, it has not come on record that Mr.Kakade had instigated the other workmen not to sign the Undertaking and participated in the said illegal strike in a similar manner though it is proved that Mr.Kakade did not furnish Undertaking of normal work and to maintain discipline and thus, did not report for duty. It is true that the view taken by the Labour Court regarding the strike declared as illegal as a pre condition for such a misconduct, is not in keeping with the law laid down by this Court and more particularly, in the case of *Bharatiya Arogya Nidhi Sheth Kantilal C.Parikh General Hospital Vs. Bombay Labour Union and Anr. reported in 2001 1 CLR 941*.

8. The acts of the workmen not to furnish the undertaking as demanded from 27.4.1984 and to remain away from work certainly amounted to cessation of work by concerted understanding and therefore, it cannot be an act of short of strike. Under clause 24(b), going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof, is an act of misconduct. The declaration of strike as illegal by a Court of law, cannot be said to be a pre-condition for proving such an act of misconduct. At the same time, almost the majority of the workmen had participated in the said act and the Management

had consequently issued a notice of lock-out (the lock-out commenced from 27th May, 1984) and therefore almost every worker in the factory was guilty of such a misconduct and in isolation, there could not be any justification to hold Mr.Kakade alone guilty unless the charge of instigating such a strike, was proved.

9. Now coming to the alleged assault on Mr.Palande, by following the reasons set out in the judgment in W.P.No. 2434 of 1996, it has to be held that this charge could not be proved.

. As far as the incidents of 6th and 7th August, 1984 and 5th September, 1984 as set out in charge nos. 6 and 7 are concerned, it is required to be noted that the same witnesses who were examined in the domestic enquiry against Mr.Chavan were the witnesses in this case as well and the enquiry against Mr.Kakade was held in the second half of the day. The depositions were recorded separately and there was no continuity of sittings in both the enquiries and though they were held on the same day. It would be necessary to examine the testimony of the victims against Mr.Kakade. For the incident of 6th August, 1984, the witness is Shri.Sharma who had stated that he was working as Assistant Manager in the Accounts Department and he knew Mr.Kakade who was

working as semi-skilled worker in the production department. He also knew Mr.Chavan, Mr.Kumbharkar, Mr.Rajguru and Mr.Rama Mangilal as the workers in the factory. At about 11 a.m. on 6.8.1984, he was woken up because of shouting infront of his house and when he looked outside, he noticed a group of about 50 to 60 workers from his factory and they were using abusive and threatening language. In the crowd, Mr.Kakade, Mr.Chavan, Mr.Rajguru as well as Mr.Kumbharkar were present and they were asking the other workers also to shout. After sometime, they left the place. On the next day, he informed the incident to Mr.Nandre and other senior Officers in the factory. For the incidents of 7th August, 1984, Mr.V.U.Shenoy and Mr.P.K.Chaterjee are the two witnesses. The first incident was at about 11 p.m. on 7th August, 1984 infront of house of Mr.Chaterjee near Chatushringi temple. Both the witnesses had attributed a specific role to Mr.Kakade viz. threats of assault including loss of limbs if Mr.Chaterjee reported for duty on the next day. It appears that for sometime i.e. after about 15-20 minutes, they left the place and went to the house of Mr.Shenoy in Bhosale Nagar area which is nearby locality from Chatushringi area. Mr.Shenoy also was given same threats as were disclosed by Mr.Chaterjee. About the incident of 5th September, 1984, as per the

Management, it is divided in two parts viz. in the first part assault on three supervisors i.e. Mr.Navle, Mr.Sarode and Mr.Pendharkar near Deccan Gymkhana at about 6.50 a.m. and subsequent assault on Mr.M.P.Sethi, Mr.U.T.Abhyankar and Mr.C.M.Palekar. From both these incidents, one witness each, has been examined i.e. Mr.Sarode and Mr.Sethi. As noted in the case of Mr.Chavan, the testimony of these two witnesses cannot be held to be unreliable and they being the victims of assaults, it could not be said that the Management had fabricated a false case against Mr.Kakade. For the reasons stated in Mr.Chavan's case it has to be held that the charges in respect of incidents of 6th and 7th August, 1984 as well as 5th September, 1984, were duly proved against Mr.Kakade as well and the reasoning given by the learned Judge of the Labour Court in holding that these charges were not proved, cannot be accepted. Once it was held that the enquiry was conducted properly against Mr.Kakade though it was an exparte enquiry, it was necessary for the Labour Court to consider the evidence as it appeared before the Enquiry Officer and there was no challenge to the said evidence by examining any additional witnesses before the Labour Court in defence.

10. To conclude, from the first charge-sheet, the

charges at serial nos. 6 and 7 were proved and from the second charge sheet, the charge under clause 24(w) was held to be proved by the Labour Court which finding has not been challenged by the employee. The Labour Court did not accept the Enquiry Officer's finding that the charges under clause 24(r) was also proved.

11. Now coming to the quantum of punishment, the Labour Court held that from the first charge sheet, none of the charges were proved and from the second charge-sheet, only one charge was proved. It proceeded to direct reinstatement with 75% of the backwages and continuity of service. The Labour Court thought it appropriate to deny 25% of the backwages. The view taken by the Labour Court of denying of 25% backwages on the face of the two charges framed in the first charge sheet, having been proved against Mr.Kakade, requires to be reconsidered.

. Mr.Purav, the learned counsel for the petitioner urged that even charge nos.6 and 7 from the first charge sheet were serious enough to warrant punishment of dismissal as has been awarded to and upheld against Mr.Chavan. However, both the cases cannot be compared and considered in a strait-jacket

method. So far as Mr.Chavan is concerned, even from the second charge-sheet, more than one charges have been proved and his role in participation in acts, subversive of discipline even after settlement dated 15.3.1985 was signed, has been clearly reflected. The Enquiry Officer was the same who conducted the enquiries against Mr.Chavan and Mr.Kakade in respect of both the charge-sheets but the findings were different and these findings are on proper appreciation of the evidence so far as the second charge sheet is concerned. Mr.Topkar, the learned counsel for the respondent-Union pointed out that the age of Mr.Kakade is about 50 years and after the impugned award was passed in his favour, he could not report for duty as the same was stayed by this Court and the employee has been extended the benefits under Section 17(B) of the I.D.Act inasmuch as an amount of Rs.1500/- per month was directed to be paid to him. He has been in receipt of the said amount. This amount of Rs.1500/- was fixed by taking into consideration that Mr.Kakade was self-employed, (he was driving an Autorickshaw). Having regards to these obtaining circumstances as well as the passage of time (about 20 years) from the date of alleged misconducts, it would be appropriate to mould the relief granted by the Labour Court. It is also required to be noted that Mr.Kakade has been out of

employment for the last 20 years and this itself is in a way a punishment suffered by him.

12. In the circumstances, the petition is partly allowed. The award of the Labour Court regarding reinstatement in service is hereby confirmed and the order of payment of 75% backwages, is set aside. Recovery of the amount of subsisting allowance paid to Mr.Kakade during the interregnum, does not arise and the benefit of continuity of service will be maintained. The amount deposited by the Management, be refunded to it.

13. Rule made partly absolute in terms of above order with no order as to costs.

[B.H.MARLAPALLE,J.]